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MAY 191
CHARLES ELMORE

No. 15

In the Supreme Court of the United States

OCTOBER TERM, 1929

BURNS POE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF WASHINGTON, APPELLANT (BELOW)

v.

H. G. SEABORN, APPELLEE (BELOW)

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT MOTION TO BRING UP THE ENTIRE RECORD

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 492

BURNS POE, COLLECTOR OF INTERNAL REVENUE FOR the District of Washington, appellant (below)

v.

H. G. SEABORN, APPELLEE (BELOW)

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT MOTION TO BRING UP THE ENTIRE RECORD

Now come Burns Poe, Collector of Internal Revenue for the District of Washington, Appellant, and H. G. Seaborn, Appellee, in this cause in the United States Circuit Court of Appeals for the Ninth Circuit, now pending in this Court on questions certified by the said Circuit Court of Appeals, and move that this Honorable Court issue its writ of certiorari commanding that court to certify and send to this Court the entire record in this cause, in order that this Court may consider and decide the whole matter in controversy as upon appeal pursuant to Section 239 of the Judicial Code as amended by the Act of February 13, 1925, and Rule 37 of the Rules of this Court.

A certified transcript of the record in this case and nine printed copies thereof have been lodged

with the Clerk of this Court as exhibits to this motion.

This was a suit commenced in the United States District Court for the Western District of Washington by H. G. Seaborn, a resident of the State of Washington, against Burns Poe, as Collector of Internal Revenue for the District of Washington, to recover Federal income taxes paid under protest for the year 1927. The Collector, for the purpose of making a test case, refused to accept the separate returns filed by Seaborn and his wife, in which each had reported one-half of the community income, and made a reassessment imposing upon Seaborn alone the tax upon the entire community income. The action was begun by Seaborn to recover the difference between the amount of the tax as reassessed and paid and the amount of the tax if computed on the separate returns. From a judgment in favor of the plaintiff the Collector duly appealed to the United States Circuit Court of Appeals for the Ninth Circuit, which court by certificate filed November 26, 1929, has certified to this Court the following questions:

> First. May a husband and wife domiciled in the State of Washington make separate returns of community income, each reporting one-half thereof, and pay taxes on such returns, in accordance with the practice which has prevailed in that State for the past eight years under the rulings and sanction of the Attorney General, the Secretary

of the Treasury and other taxing officers of the Government? Or, putting the question in another form—

Second. Must the husband make return and pay the tax on the entire community income of the husband and wife in that State, as suggested, if not decided by the Supreme Court in *United States* v. *Robbins*, 269 U. S. 315?

It is thought that the entire record will offer the Court assistance in its decision which is not available in the certificate alone, for the reason that the certificate does not show the nature of the community income or its sources; as, for example, whether it is derived from the personal earnings of one of the spouses, or from community property, or the character of the property from which it is derived. The Court may desire to know these facts and counsel feel that they will be able to present the case more satisfactorily upon the record than upon the certificate. While the questions certified cover all the decisive issues in this case, it is believed that in view of the importance of the question to the Government and to taxpayers residing in Washington, any possibility of further litigation should be avoided by a final determination in this Court of the whole controversy.

A similar motion is being made in the case of *Fred O. Goodell, Collector of Internal Revenue*, v. *I. B. Koch*, No. 882 on the docket of this Court for the present term, which is also on certificate from the Circuit Court of Appeals for the Ninth Circuit,

and involves the question of the taxation of community income in Arizona. The Government is also submitting simultaneously herewith a motion to advance that case, the instant case, and also, in the event certiorari is granted, two other cases, involving the taxation of community income in Texas and Louisiana (*Hopkins, Collector, Petitioner, v. Bacon*, No. 821; *Bender, Collector, Petitioner, v. Pfaff*, No. 823), for hearing in sequence on October 27 next. It is believed that it would be of assistance to the Court to have before it at the hearing the entire record in the instant case.

Wherefore, the parties hereto jointly pray that this Honorable Court issue its writ of certiorari commanding the United States Circuit Court of Appeals for the Ninth Circuit to certify and send to this Court the entire record in this cause in order that this Court may consider and decide the whole matter in controversy as upon appeal.

BURNS POE,
Collector of Internal Revenue
for the District of Washington.
By THOMAS D. THACHER,
Solicitor General.
H. G. SEABORN,
By GEORGE DONWORTH,
Attorney.

MAY, 1930.

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